

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KIMBERLY A. HIVELY

Plaintiff,

v.

IVY TECH COMMUNITY COLLEGE,

Defendant.

CAUSE NO. 3:14-CV-1791-JD-MGG

PLAINTIFF'S UNOPPOSED MOTION TO MODIFY THE SCHEDULING ORDER

Plaintiff Kimberly Hively moves for a six-week extension of the current deadlines set forth in the Scheduling Order, Dkt. No. 29. Defendant Ivy Tech Community College does not oppose the extension. The extension is needed by pro bono counsel for Ms. Hively due to disruption of their practice by Hurricane Harvey.

Pro bono counsel's office is located in downtown Houston, Texas, and counsel live in Houston or its immediate suburbs. Hurricane Harvey came into the Houston area late on August 25, 2017. Over 60 inches of rain fell in the Houston area for an approximate four-day period. Widespread flooding occurred throughout the area, causing extensive disruption and damage. Counsel's office was closed until September 12, 2017. The Supreme Court of Texas ordered all courts in Texas to consider disaster-caused delays as good cause for modifying or suspending deadlines and procedures. (*See Exhibit A*) Moreover, the City of Houston's non-emergency offices were closed through September 12, 2017. Many roads and highways were closed due to flooding. Many people lost or suffered damage to their homes. The physical, financial, and mental toll the storm took on the City was enormous, and made it extremely difficult to handle any legal

matters that were staffed solely by lawyers in Houston. Indeed, it was not until the last week of September that some sense of normalcy began to return to the City. Due to this disruption of their lives and practices, counsel for Ms. Hively need additional time to develop her case.

The present deadlines are as follows:

Present Deadlines	
Event	Date
Parties will name the mediator they have agreed upon by:	October 6, 2017
Plaintiff shall file and serve any expert reports, under Fed. R. Civ. P. 26(a)(2)	October 27, 2017
Defendant shall file and serve any expert reports, under Rule 26(a)(2)	November 27, 2017
Close of discovery	January 26, 2018
Parties will conduct mediation no later than:	February 26, 2018

A six-week extension would move the deadlines to the following dates:

Proposed Deadlines	
Event	Date
Parties will name the mediator they have agreed upon by:	November 17, 2017
Plaintiff shall file and serve any expert reports, under Fed. R. Civ. P. 26(a)(2)	December 8, 2017
Defendant shall file and serve any expert reports, under Rule 26(a)(2)	January 8, 2018
Close of discovery	March 9, 2018
Parties will conduct mediation no later than:	April 9, 2018

Additionally, a proposed order showing these changes is attached as Exhibit B.

Accordingly, Plaintiff asks for a six-week extension of the deadlines in this case to the dates set forth above.

Date: October 2, 2017

Respectfully submitted,

FISH & RICHARDSON P.C.

/s/ Danielle J. Healey

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I, Danielle J. Healey, counsel for Kimberly Hively conferred with counsel for Ivy Tech Community College on October 2, 2017. Counsel for Ivy Tech Community College have confirmed that they do not oppose this motion.

/s/ Danielle J. Healey

Danielle J. Healey

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system.

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ATTORNEYS FOR DEFENDANT
IVY TECH COMMUNITY COLLEGE

Exhibit A

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9091

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 17-010

EMERGENCY ORDER AUTHORIZING MODIFICATION AND SUSPENSION OF COURT PROCEDURES IN PROCEEDINGS AFFECTED BY DISASTER

ORDERED that:

1. Hurricane Harvey struck the Texas coast on August 25, 2017. On August 23, 2017, Governor Abbott preemptively declared a state of disaster in 30 counties.¹ On August 26, 2017, Governor Abbott declared a state of disaster in 20 additional counties.²

2. Court proceedings not only in those counties but throughout Texas may be affected by the disaster because of closures of courts and clerks' offices and difficulties with access, travel, and communication by lawyers, parties, and others.

¹ Those counties are: Aransas, Austin, Bee, Calhoun, Chambers, Colorado, Brazoria, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton and Wilson.

² Those counties are: Atascosa, Bexar, Brazos, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Montgomery, Newton, Tyler, Walker, Washington and Willacy.

3. Pursuant to Section 22.0035(b)³ of the Texas Government Code, all courts in Texas should consider disaster-caused delays as good cause for modifying or suspending all deadlines and procedures—whether prescribed by statute, rule, or order—in any case, civil or criminal.

4. This Order expires September 27, 2017 unless extended by the Courts.

5. The Clerks of the Supreme Court and the Court of Criminal Appeals are directed to:

a. post a copy of this Order on www.txcourts.gov;

b. file a copy of this Order with the Secretary of State; and

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

6. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

³ “Notwithstanding any other statute, the supreme court may modify or suspend procedures for the conduct of any court proceeding affected by a disaster during the pendency of a disaster declared by the governor. An order under this section may not extend for more than 30 days from the date the order was signed unless renewed by the supreme court.”

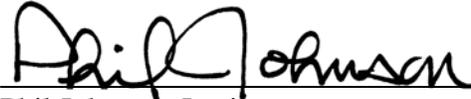
Dated: August 28, 2017



Nathan L. Hecht, Chief Justice



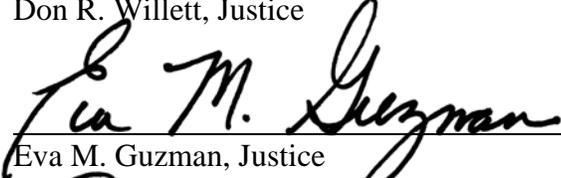
Paul W. Green, Justice



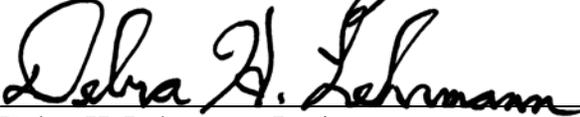
Phil Johnson, Justice



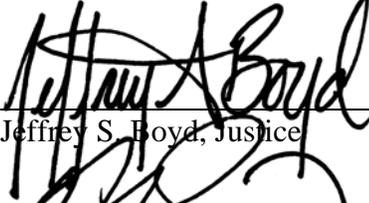
Don R. Willett, Justice



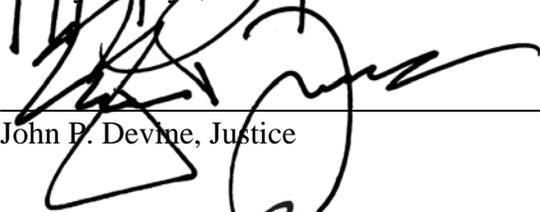
Eva M. Guzman, Justice



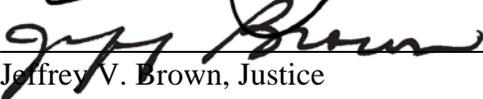
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice

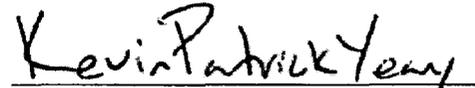


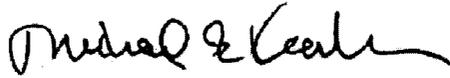
John P. Devine, Justice



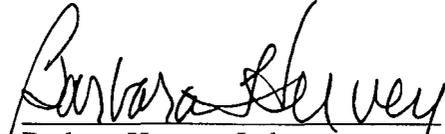
Jeffrey V. Brown, Justice


Sharon Keller, Presiding Judge


Kevin P. Yeary, Judge


Michael Keasler, Judge


David Newell, Judge


Barbara Hervey, Judge

Mary Lou Keel, Judge

Elsa Alcala, Judge

Scott Walker, Judge

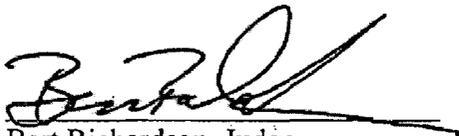

Bert Richardson, Judge

Exhibit B

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
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KIMBERLY A. HIVELY

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Defendant.

CAUSE NO. 3:14-CV-1791-JD-MGG

[PROPOSED] ORDER

On October 2, 2017, counsel for Plaintiff filed her Motion to Modify the Scheduling Order. Through her motion, Plaintiff seeks extension of this Court's deadlines due to the after-effects of Hurricane Harvey. Plaintiff notes that opposing counsel does not oppose the motion.

With good cause shown and no objection from Defendant, the Court now **GRANTS** Plaintiff's motion. The deadlines for the parties are **EXTENDED** as follows: Parties will name the mediator they have agreed upon by **November 17, 2017**; Plaintiff shall file and serve any expert reports, under Fed. R. Civ. P. 26(a)(2), by **December 8, 2017**; Defendant shall file and serve any expert reports, under Rule 26(a)(2), by **January 8, 2018**; close of discovery is **March 9, 2018**; and Parties will conduct mediation no later than **April 9, 2018**.

SO ORDERED.

Dated this _____ day of October 2017.

United States Magistrate Judge